

# **MINUTES OF THE OPEN SESSION**

## **OF THE RHODE ISLAND ETHICS COMMISSION**

**April 14, 2015**

**The Rhode Island Ethics Commission held its 5th meeting of 2015 at 9:00 a.m. at the Rhode Island Ethics Commission conference room, located at 40 Fountain Street, 8th Floor, Providence, Rhode Island, on Tuesday, April 14, 2015, pursuant to the notice published at the Commission offices, the State House Library, and electronically with the Rhode Island Secretary of State.**

**The following Commissioners were present:**

**Ross Cheit, Chair    M. Therese Antone**

**John D. Lynch, Jr., Vice Chair    Timothy Murphy**

**Robert A. Salk, Secretary    Marisa A. Quinn**

**Also present were Edmund L. Alves, Jr., Commission Legal Counsel; Kent A. Willever, Commission Executive Director; Katherine D'Arezzo, Senior Staff Attorney; Jason Gramitt, Education Coordinator/Staff Attorney; Staff Attorneys Teresa Giusti and Amy C. Stewart; and Commission Investigators Peter J. Mancini and Gary V. Petrarca.**

**At 9:00 a.m., the Chair opened the meeting. The first order of business was:**

**Administration of the Oath of Office to Marisa A. Quinn.**

**Chair Cheit administered the oath of office to Commissioner Quinn.**

**The next order of business was:**

### **Advisory Opinions**

**The advisory opinions were based on draft advisory opinions prepared by Commission Staff for review by the Commission and were scheduled as items on the Open Session Agenda for this date.**

**The first advisory opinion was that of:**

**Christine J. Engustian, Esq., the former Probate Judge for the City of East Providence, requesting an advisory opinion regarding whether the Code of Ethics prohibits her from representing clients before the East Providence Probate Court and the East Providence City Council within one year following the date of her official severance from the East Providence Probate Court.**

**Staff Attorney Stewart presented the Commission Staff recommendation. The Petitioner was present. Upon motion made by Commissioner Antone and duly seconded by Commissioner Lynch, it was unanimously**

**VOTED: To issue an advisory opinion, attached hereto, to Christine J. Engustian, Esq., the former Probate Judge for the City of East Providence.**

**The second advisory opinion was that of:**

**Michele H. Kazarian, Esq., the Probate Judge for the City of East Providence, who also works part-time as an attorney for the Rhode Island General Assembly, requesting an advisory opinion regarding whether the Code of Ethics prohibits: (1) her participation in matters before the East Providence Probate Court in which a current or former employee or member of the general assembly is the attorney of record; and (2) her continued political activity for various state and local candidates.**

**Staff Attorney Stewart presented the Commission Staff recommendation. The Petitioner was present. In response to the Petitioner, Chair Cheit stated that donating to a political campaign does not, in and of itself, constitute a business associate relationship. The Petitioner stated that she is employed at will by the General Assembly. Commissioner Murphy stated that he thought it was problematic for her to preside over matters involving General Assembly members given their ability to terminate her state employment. In response to Commissioner Lynch, Representative Daniel P. McKiernan (who was present and awaiting the consideration of his own advisory opinion request) stated that it is the General**

**Assembly's leadership team, not the whole assembly, that makes hiring decisions for the Office of Legislative Council. Chair Cheit suggested that maybe the Petitioner should recuse if persons who have the authority to fire the Petitioner appear before her.**

**In response to Chair Cheit, Staff Attorney Stewart stated that the advisory opinion would need to be amended in order to address more specifically who has authority over her state employment and whether recusal would be required. Staff Attorney Gramitt stated that the Petitioner would be required to provide the Commission with more information as to the terms of her employment at the General Assembly. Chair Cheit, with the consensus of the Commission, directed the staff to gather more information, assess whether recusal is required and present an amended draft at the next meeting.**

**The third advisory opinion was that of:**

**James V. Silvestri, a member of the Westerly Town Council, requesting an advisory opinion regarding whether the Code of Ethics prohibits him from participating in Town Council matters involving the customers of the NAPA Auto Parts store that he owns in Westerly.**

**Staff Attorney Stewart presented the Commission Staff recommendation. The Petitioner was present. In response to the Petitioner, Staff Attorney Stewart stated that he cannot participate in the Town Council's discussion of any line items involving municipal**

vehicle maintenance, given that he may have sold auto parts to those Town departments. In response to Commissioner Quinn, Staff Attorney Stewart stated that the Petitioner may still participate in the Town Council's consideration of other line items, assuming there are no other conflicts of interest, and the entire Town budget as a whole.

Discussion ensued about the nature of the line of credit that the Petitioner offers to many of his NAPA store customers. Commissioner Salk was concerned that the line of credit makes those customers' contributions to the Petitioner's business clearer than those customers who pay with cash or credit cards. Staff Attorney Stewart stated that the Petitioner does not have exclusive agreements with these customers, but rather provides lines of credit in the normal course of business. She stated that the Petitioner represents that this is a common practice in the auto parts industry. She added that it would severely impinge on his ability to serve on the Town Council if every customer to whom the Petitioner offers a line of credit were his business associate.

Chair Cheit stated that it is significant here that these customers are not required to purchase parts from the Petitioner's store. The Petitioner stated that some customers are strictly cash or credit card, and he has the ability to track the purchases of any customer. Upon motion made by Commissioner Lynch and duly seconded by Commissioner Quinn, it was unanimously

**VOTED: To issue an advisory opinion, attached hereto, to James V. Silvestri, a member of the Westerly Town Council.**

**The fourth advisory opinion was that of:**

**Jon M. Restivo, Esq., a member of the Foster Town Council, requesting an advisory opinion regarding whether he qualifies for a hardship exception to the Code of Ethics' prohibition on representing himself before subsidiary boards, the Foster Zoning Board and the Foster Planning Board, in order to establish a residential compound on the property of his personal residence.**

**Staff Attorney Stewart presented the Commission Staff recommendation. The Petitioner was present. In response to Chair Cheit, the Petitioner stated that he and his spouse looked for a property that would have enough space to allow his spouse's parents to also live on the property. He further stated that he did not know that the zoning ordinance requires a property owner to live at a property for at least five years prior to seeking a residential compound designation. Commissioner Antone questioned whether the Petitioner would be able to subdivide the property after receiving the residential compound designation. The Petitioner stated that he would not and would have to sell the entire property, including his house.**

**In response to Commissioner Lynch, Staff Attorney Stewart stated**

that the advisory opinion provides permission to appear before both the Zoning and Planning Boards. She further stated that many hardship exception advisory opinions involve multiple-step processes before both zoning and planning boards. The Petitioner stated that he only has to appear before the Foster Zoning Board because he needs a variance from the five-year residency requirement for residential compound designations.

In response to Chair Cheit, Staff Attorney Stewart stated that the Petitioner's mother-in-law's medical issues were not dispositive as to the hardship issue but relevant under the totality of the circumstances analysis. She stated that the instant case involves the property of the Petitioner's personal residence and is for the personal purpose of having his in-laws reside on his property. Upon motion made by Commissioner Murphy and duly seconded by Commissioner Antone, it was unanimously

**VOTED:** To issue an advisory opinion, attached hereto, to Jon M. Restivo, Esq., a member of the Foster Town Council.

The fifth advisory opinion was that of:

Daniel P. McKiernan, a legislator serving in the Rhode Island House of Representatives, requesting an advisory opinion regarding whether he may enter into a law partnership with two other attorneys who are registered legislative lobbyists.

Staff Attorney Gramitt presented the Commission Staff recommendation. The Petitioner was present. In response to Chair Cheit, Staff Attorney Gramitt stated that the Commission has jurisdiction to answer whether the Petitioner may enter into a law partnership with two other attorneys who are registered legislative lobbyists. In response to Commissioner Antone, the Petitioner stated that he would not originate lobbying clients or work on matters on behalf of a lobbying client. The Petitioner stated that the law partnership consists of three solo practitioners sharing space and costs. He informed that rent expenses would be divided equally and personnel costs would be proportionate to the work done for each attorney.

Commissioner Murphy questioned whether the Petitioner's proposed law partnership is employment that is in substantial conflict with the discharge of his official duties under R.I. Gen. Laws § 36-14-5(b). Staff Attorney Gramitt replied that the Rhode Island Supreme Court's decision in *Irons* prevents the Ethics Commission from questioning the motives behind a legislator's official actions that are part of his legislative duties.

Commissioner Lynch stated that it is not unusual for attorneys to share space to reduce costs. The Petitioner stated that Patrick J. Quinlan, one of his proposed law partners, is nearing retirement and the partnership will make it easier to transfer his litigation clients to



the Petitioner and his lobbying clients to Christy B. Durant, the third partner. He further stated that he would adhere to his representations in the advisory opinion and recuse from participating in matters involving his law partners or their lobbying clients. In response to Commissioner Antone, Chair Cheit stated that the Ethics Commission cannot advise the Petitioner to recuse from matters over which the Commission does not have jurisdiction. Upon motion made by Commissioner Antone and duly seconded by Commissioner Salk, there was more discussion.

Discussion ensued regarding whether the advisory opinion should be issued. Chair Cheit proposed adding the word “currently” to the final sentence of the opinion, on page three, to state that it “is not a matter that is currently within the jurisdiction of the Rhode Island Ethics Commission.” Commissioner Antone accepted Chair Cheit’s friendly amendment to her motion, which she renewed, having been previously seconded by Commissioner Salk, it was

**VOTED:** To issue an advisory opinion, as amended and attached hereto, to Daniel P. McKiernan, a legislator serving in the Rhode Island House of Representatives.

**AYES:** John D. Lynch, Jr.; Robert A. Salk; M. Therese Antone; Marisa A. Quinn; Ross Cheit.

**NOES:** Timothy Murphy.

**The final advisory opinion was that of:**

**Maria Lawler, the Treasurer for the Town of Exeter, requesting an advisory opinion regarding whether the Code of Ethics prohibits her from accepting an offer from the Town Council that would expand her role as Treasurer from that of a part-time to a full-time position, with an associated increase in salary commensurate with the expansion of her duties.**

**Staff Attorney Stewart presented the Commission Staff recommendation. The Petitioner was present. Upon motion made by Commissioner Murphy and duly seconded by Commissioner Antone, it was unanimously**

**VOTED: To issue an advisory opinion, attached hereto, to Maria Lawler, the Treasurer of the Town of Exeter.**

**The next order of business was:**

**Approval of minutes of the Open Session held on March 24, 2015.**

**Upon motion made by Commissioner Antone and duly seconded by Commissioner Lynch, it was**

**VOTED: To approve minutes of the Open Session held on March 24,**

**2015.**

**AYES: John D. Lynch, Jr.; M. Therese Antone; Ross Cheit.**

**ABSTENTIONS: Robert A. Salk; Timothy Murphy; Marisa A. Quinn.**

**The next order of business was:**

### **Legislative Update**

**Staff Attorney Gramitt summarized the status of the bills listed on the agenda for this meeting. First, he stated that H 5306, an Act relating to a Code of Conduct for public officers and employees, came before the House Judiciary Committee for a hearing last week and was held for further study. Second, he informed that H 5860, related to prohibiting members of the General Assembly from simultaneously holding office in municipal government, was withdrawn by its sponsor. Third, he stated that H 5663, which proposes amendments to R.I. Gen. Laws § 36-14-5(n) & (o), came before the House Judiciary Committee for a hearing last week and was held for further study. He noted that John Marion, testifying on behalf of Common Cause of Rhode Island, stated that while Common Cause has yet to take a position on this bill, it opposed the removal of the Ethics Commission's authority to grant exceptions to the revolving door prohibitions where the Commission determines that there is no appearance of impropriety.**

Fourth, Staff Attorney Gramitt stated that H 5374, which is Representative Marcello's bill to restore the Ethics Commission's jurisdiction over the General Assembly, came before the House Judiciary Committee for a hearing last week and was held for further study. He informed that he testified in favor of H 5374, expressing the Commission's belief that this bill most closely tracks the intent of the voters in 1986. He stated that the following organizations/individuals testified in support of H 5374: Common Cause of Rhode Island; Rhode Island League of Women Voters; Operation Clean Government Rhode Island; and Phil West. He advised that Steve Brown submitted written opposition on behalf of the Rhode Island ACLU. Finally, Staff Attorney Gramitt advised that S 0056, the Senate version of H 5374, and S 0173, Senator Sheehan's bill to restore the Ethics Commission's jurisdiction over the General Assembly with some compromises, are scheduled to be heard by the Senate Judiciary Committee that evening. He stated that he would be attending and would testify in support of S 0056, similar to his comments for H 5374. He stated that, as directed by the Commission, he would not be taking a position on S 0173.

The next order of business was:

Director's Report.

Executive Director Willever reported that there were eight (8)

complaints and four (4) advisory opinions pending. He stated that seven (7) APRA requests were granted since the last meeting, all of which were completed within one (1) business day.

The next order of business was:

### **Executive Session.**

At 10:19 a.m., upon motion made by Commissioner Murphy and duly seconded by Commissioner Antone, it was unanimously

**VOTED:** To go into Executive Session, to wit:

1. Motion to approve minutes of the Executive Session held on March 10, 2015.
2. Motion to approve minutes of the Executive Session held on March 24, 2015.
3. In re: Eunice D. DeLaHoz, Complaint No. NF2014-1, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) and (4).

The Commission reconvened in Open Session at approximately 10:31 a.m. Upon motion made by Commissioner Murphy and duly seconded by Commissioner Antone, it was unanimously

**VOTED: To seal the minutes of the Executive Session held on April 14, 2015.**

**The next order of business was:**

**Report on Actions Taken in Executive Session.**

**Chair Cheit reported that the Commission took the following actions in the Executive Session:**

**1. Voted to approve the minutes of the Executive Session held on March 10, 2015.**

**[The vote was as follows:**

**AYES: John D. Lynch, Jr.; Robert A. Salk; Timothy Murphy; Ross Cheit.**

**ABSTENTIONS: M. Therese Antone; Marisa A. Quinn.]**

**2. Voted to approve the minutes of the Executive Session held on March 24, 2015.**

**[The vote was as follows:**

**AYES: John D. Lynch, Jr.; M. Therese Antone; Ross Cheit.**

**ABSTENTIONS: Robert A. Salk; Timothy Murphy; Marisa A. Quinn.]**

**3. In the matter of In re: Eunice D. DeLaHoz, Complaint No. NF2014-1, unanimously voted to find that probable cause exists to believe that the Respondent violated R.I. Gen. Laws § 3614-16 by failing to timely file a 2013 Financial Disclosure Statement with the Ethics Commission.**

**The final order of business was:**

**New Business**

**Chair Cheit welcomed new Commissioner Marisa A. Quinn to the Ethics Commission. At 10:33 a.m., upon motion made by Commissioner Antone and duly seconded by Commissioner Murphy, it was unanimously**

**VOTED: To adjourn.**

**Respectfully**

**submitted,**

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**Robert A. Salk**

**Secretary**